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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. JUAN VASQUEZ-VILLA, Defendant(s).	Criminal Case No. 07CR3053-L DATE: December 10, 2007 TIME: 2:00 p.m. Before Honorable M. James Lorenz UNITED STATES' STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF THE CASE

The Defendant, Juan Vasquez-Villa (hereinafter "Defendant"), was charged by a grand jury on November 9, 2007, with violating 8 U.S.C. § 1326, deported alien found in the United States. Defendant was arraigned on the Indictment on November 13, 2007, and entered a plea of not guilty.

II

STATEMENT OF FACTS

Defendant was apprehended on the morning of August 5, 2007, by a Border Patrol Agent ("BPA") 200 yards north of the United States/Mexico International Boundary and approximately two miles east of the San Ysidro, California Port of Entry. There, at approximately 2:30 p.m. that day, a BPA encountered a group of four individuals attempting to conceal themselves in surrounding brush in an area known as "Washer Woman's." The BPA identified himself to the four individuals, one of whom was Defendant. There, Defendant admitted that he was a citizen of Mexico with no documents entitling him to enter or remain in the United States.

Defendant was transported to the Imperial Beach, California Border Patrol Station's processing center. At the center, BPAs used Defendant's fingerprints to perform a computerized check of Defendant's criminal and immigration history.

B. DEFENDANT'S CRIMINAL AND IMMIGRATION HISTORY

Preliminary criminal history reports show that Defendant has at least five felony convictions in California. In 1994, Defendant was convicted in Los Angeles of Second Degree Burglary, in violation of Cal. PC § 459; he was sentenced to 365 days incarceration. In 1995, he was convicted in Los Angeles of Possession of a Controlled Substance, in violation of Cal. HS § 11350(a); he was sentenced to 16 months' incarceration. In 1999, he was convicted in Los Angeles of Petty Theft With Prior, in violation of Cal. PC §§ 484 and 666; he was sentenced to 16 months' incarceration. In 2003, Defendant was again convicted in Los Angeles of Second Degree Burglary, in violation of Cal. PC § 459; he was sentenced to 364 days incarceration. Finally, in 2004, Defendant was again convicted in Los Angeles of Possession of a Controlled Substance, in violation of Cal. HS § 11350(a); he was sentenced to 16 months' incarceration.

Defendant's was last removed to Mexico on August 2, 2007.

III

UNITED STATES' MOTIONS

A. FINGERPRINT EXEMPLARS

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). Defendant's fingerprints are not testimonial evidence. See Schmerber v. California, 384 U.S. 757 (1966). Using identifying physical characteristics, such as fingerprints, does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969); see also United States v. St. Onge, 676 F. Supp. 1041, 1043 (D. Mont. 1987).

B. RECIPROCAL DISCOVERY

To date, the United States has provided Defendant with 78 pages of discovery, including reports of his arrest, his rap sheet, and copies of immigration and conviction documents. The United States also agrees to schedule an A-file viewing at a time that is mutually convenient for defense counsel and the United States' case agent. The Government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

IV

CONCLUSION

For the foregoing reasons, the Government respectfully requests that its motions be granted.

DATED: November 26, 2007.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ William A. Hall, Jr.
WILLIAM A. HALL, JR.
Assistant United States Attorney